A

NIKODEMUS SINGAI & ORS

v.

SIBU SLIPWAY SDN BHD & ORS

B

HIGH COURT SABAH & SARAWAK, KUCHING
RHODZARIAH BUJANG JC
[SUIT NO: 22-208-2007-I]
18 JANUARY 2010

C

ADMINISTRATIVE LAW: *Remedies - Declaration - Plaintiffs seeking declaration as to their native customary rights over land - Whether plaintiffs ought to have proceeded for judicial review instead of declaratory relief - Whether principle in O'Reily v. Mackman (1983) applicable - Whether plaintiff's assertions of native customary rights is under private law*

D

LAND LAW: *Customary land - Alienation - Whether land titles and forest licenses may be issued over native customary land - Whether native customary land can be alienated - Cause of action for unlawful alienation or licensing of native customary land to lie against issuing authority and not transferee or licensee*

E

LAND LAW: *Customary land - Claim of customary rights over land - Leases already granted by government to third parties over disputed lands - Whether proper for plaintiffs to seek declaratory relief over claim of customary rights - Whether plaintiffs should have asked Director of Lands & Surveys and Settlement Officer to decide on their claim*

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NATIVE LAW AND CUSTOM: *Land dispute - Claim of customary rights over land - Leases already granted by government to third parties over disputed lands - Whether proper for plaintiffs to seek declaratory relief over claim of customary rights - Whether plaintiffs should have asked Director of Lands & Surveys and Settlement Officer to decide on their claim*

G

NATIVE LAW AND CUSTOM: *Land dispute - Native customary land - Alienation - Whether land titles and forest licenses may be issued over native customary land - Whether native customary land can be alienated - Cause of action for unlawful alienation or licensing of native customary land to lie against issuing authority and not transferee or licensee*

H

I

The three plaintiffs filed a representative action on behalf of all others who claimed native customary rights over certain lands in the district of Simunjan, Sarawak. The 1st defendant was the holder of Forest Licence No. 8393 and the 2nd and 3rd defendants were the

holders of certain leases over certain lands. The plaintiffs contended that the forest licence and the leases covered the areas of land over which they have native customary rights. They filed this action seeking a declaration on their said rights over the land whilst praying for the forest licence and provisional leases be declared null and void with damages. All the defendants filed applications to strike out the writ of summons and statement of claim on the grounds that the plaintiffs' action should have been brought by way of judicial review of the administrative action of the 4th and 5th defendants' in issuing the licence and lease. The 3rd defendant also applied under O. 14A of the Rules of the High Court, 1980 for determination of the issue whether the 3rd defendant's rights, title and interest as registered proprietor of the land was indefeasible and free of the plaintiff's claims of alleged native customary rights. Counsel for the public authorities and the Government of Sarawak also referred to ss. 84 and 95 of the Sarawak Land Code claiming that the express procedure for determination of the plaintiffs' rights under the Land Code precluded resort to the court for these declaratory reliefs.

Held (allowing the first 3 defendants' applications with costs and dismissing the 4th - 6th defendants' applications with costs):

(1) Cases involving claims of native customary rights such as this one are an exception to the principle established in *O'Reily v. Mackman* [1983] 2 AC 237. The prosecution of the plaintiffs' right here was a genus in itself for by it's very definition that right was largely unsupported by evidence; it was almost purely proved by oral evidence based on customs and tradition and is a peculiarity of only 2 states - Sabah and Sarawak. For the natives in these 2 states, - their rights to the land - to forage, to hunt, to fish and to cultivate the land, for it is not just a place to build a home but their very livelihood - this right is handed down from one generation to the next. To tie them down to the *O'Reilly's* principle when more often than not they would only know about the transgressions of their right when the land had already been dealt with by the State Authorities (as in this case) is an irreparable injustice. (para 10)

(2) The assertion by the plaintiffs of having native customary rights over the land is embedded in private law. The plaintiffs are facing the loss of their livelihood, their land and their rights to all these obviously are private in nature. (para 12)

(3) The provisions in the Land Code for determining the plaintiffs' claim of native customary rights over the land is only available for land which have yet to be touched by the government and

not when the government, through it's agencies such as the 4th and 5th defendants have taken definitive actions which have compromised the status of the land. It was impossible for the plaintiffs to ask the Director of Lands & Surveys and the Settlement Officer to decide on their claim to be so entitled to the land when the Director of Lands & Surveys himself had issued the 4th and 5th defendants with the leases. The fact that it was issued and the leases were granted, it could be implied that the government through these agencies had decided that the plaintiffs had no native customary rights over the land in dispute. The plaintiffs were not in any position to have their rights determined by the very agency who had denied them of it. The plaintiffs therefore had no other alternatives open to them but to go to court for the determination of their rights over the land. (para. 18)

(4) Land titles should not be issued over native customary land, unless they have been extinguished first but once the titles are issued, there is indefeasibility of title. (para 21)

(5) Native customary rights land should not be alienated. That is clear from ss. 130 and 15(1) of the Land Code but when it does, the claimant of these native customary rights land has a legitimate complaint against the issuer of the land title and should take issue with them; not the title holder unless they can prove fraud as stipulated in s. 132(1) of the Land Code. The same reasoning covers the forest licence of the 1st defendant for the right to take forest is incongruous which the right claimed by the plaintiffs to be so entitled to the land. Unless the native customary rights claimants can prove fraud and collusion between the Director of Forest and the licensee, the claimants' right of complaint should lie with the issuing authority and not the licensee. (paras 21 & 22)

Case(s) referred to:

Barrachough v. Brown [1897] AC 615 ***(refd)***

Chew Siang Jin v. Lau Chee Chong [2000] MLJU 771 ***(refd)***

Gillick v. West Norfolk & Wisbech Area Health Auth [1986] AC 112 ***(refd)***

Kuching Plaza Sdn Bhd v. Bank Bumiputra (M) Bhd [1991] 3 CLJ 1702; [1991] 1 CLJ (Rep) 223 SC ***(refd)***

Manggai v. Government of Sarawak & Anor [1970] 1 LNS 80 FC ***(refd)***

Mercury Ltd v. Telecommunications Director [1996] 1 WLR 48 ***(refd)***

O'Reily v. Mackman [1983] 2 AC 237 ***(refd)***

Professor A Kahar Badar & Ors v. N Krishnan & Ors [1983] 1 MLJ 412 ***(refd)***

Shaharuddin Ali & Anor v. Superintendent of Lands & Surveys Kuching Division & Anor [2004] 4 CLJ 775 HC ***(refd)***

Shin Yang Quarry Sdn Bhd v. Pusaka KTS Forests Plantation Sdn Bhd [2009] 9 CLJ 840 HC ***(refd)***
YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener) [2009] 4 CLJ 253 FC ***(refd)***
Yahya Kassim v. Kerajaan Malaysia & Anor [1998] 1 CLJ 43 CA ***(refd)***

Legislation referred to:
Land Code (Cap 81) (Sarawak), ss. 9(1), 13(1), 15(1), 28(1), 84, 94(1), 132(1)
Rules of the High Court 1980, O. 14A, O. 15 r. 16, O. 53 r. 6

Other source(s) referred to:
Halsbury's Law of Malaysia, vol 10(1) 2008 Reissue, para 250.153

For the plaintiffs - See Chee How (Baru Bian with him (absent)); M/s Baru Bian Advocates
For the 1st & 2nd defendants - Leslie Linton; M/s Battenberg & Talma Advocates

Reported by Amutha Suppayah

JUDGMENT

Rhodzariah Bujang JC:

[1] The three plaintiffs have filed a representative action on behalf of all others who claimed native customary rights over land at or around Kampung Spaoh, Kampung Menat Ulu and Kampung Menat III at Gedong in the district of Simunjan, Sarawak. The defendants in this action are Sibu Slipway Sdn Bhd, the holder of Forest Licence No. 8393, Lambang Sinar Mas Sdn Bhd, the holder of provisional leases Lot No. 1230 and Lot No. 1509, and for Lot No. 01229, Indranika Jaya Sdn. Bhd. The Superintendent of Lands & Surveys, Samarahan Division, the Director of Forest Sarawak and the Government of Sarawak are brought in as the 4th, 5th and 6th defendants, respectively. The plaintiffs contended that the forest licence and the leases issued above covered the areas of land over which they have native customary rights, proven they said by the cultivation of crops, existence of longhouses and burial grounds on the same. They have sought a declaration from the court on their said right over the land whilst praying for the forest licence and provisional leases be declared null and void with general damages to be assessed from the alleged trespass over their land. It is to be noted, before I go any further, that at the time of the filing of this action by the plaintiffs, the leases issued were provisional leases but subsequently the 2nd defendant's provisional lease was converted into 2 leases and described as Lot 226 Block 4 Sedilu-Gedong

Land District and Lot 1 Block 9 Sedilu-Gedong Land District and the provisional lease issued to the 3rd defendant was similarly converted to a lease and described as Lots 164, 162 and 173 of Sedilu-Gedong Land District.

[2] All the defendants have filed, jointly and severally, applications to strike out the writ of summons and statement of claim (encl. 17 by the 1st and 2nd defendants and encl. 44 by the 4th, 5th and 6th defendants) and by the 3rd defendant, an application under O. 14A for the following two questions of law to be determined by the court.

(i) Whether the 3rd defendant's rights, title and interest as registered proprietor of Lot No. 01229 of Sedilu-Gedong Land District (hereinafter referred to as the "3rd defendant's Land") is indefeasible and free of the plaintiff's claims of alleged native customary rights as pleaded in the statement of claim.

(ii) Whether the plaintiffs could apply for or be entitled to the remedies, reliefs or orders prayed for in the statement of claim as against the 3rd defendant.

[3] Though somewhat different in nature the underlying facts supporting the applications are the same and the considerations which I shall make in these three applications would also be the same. Thus, I propose to deal with the issues raised in this manner.

[4] First, I would decide whether the plaintiffs' action here is competent against all the defendants. If it is, then I will decide whether the timber licence and leases issued are subject to the plaintiffs' claim of native customary rights over the areas covered by the licence and leases.

Competency Of The Plaintiffs' Claim

[5] At the outset, I must say that there is no way in the world I could determine the issue of the plaintiffs' native customary rights claims in this case based on affidavit evidence alone. That must be decided in a full trial, no two ways about it. However, the defendants in this case have collectively raised this issue - the plaintiffs' action should have been brought by way of judicial review of the administrative action of the 4th and 5th defendants' in issuing the licence and provisional lease; not by way of a writ action for declaratory reliefs as prayed in this suit action. The principle established in *O'Reily v. Mackman* [1983] 2 AC 237 was cited by

their counsels in support of their argument as was Malaysian cases applying that principle, some of which I would refer to presently. That principle, simply stated, is this. A plaintiff who alleges infringement by a public authority of his rights must do so by way of judicial review and it is against public policy and an abuse of the courts process to allow him to proceed by way of an ordinary action, thereby circumventing the requirements laid down by O. 53 of the Rules of the High Court 1980.

[6] The Law Lords in the *O'Reilly*'s case have in detail explained the history behind the formulation and enactment of O. 53 - why it is at once a protection of the public and the public authority. For the plaintiffs, one of the advantage is, the said procedure allows for discovery and inspection of documents, which they can apply within 14 days from the date the leave for judicial review was granted. Within the same time frame they could also apply to administer interrogatories to cross-examine the deponent of affidavits filed in support of or in opposition to the application (see O. 53 r. 6). The timeliness in which all this was to be done (as opposed to when the action is filed by way of a suit) would greatly assist the plaintiff to gather evidence for their case against the public authority and to examine the basis of the public authority's decision. For the public authority, it is that any dissatisfaction with its decision will be taken in a timely manner and not held in abeyance until the conclusion of a trial, likely to be a lengthy one especially for cases on native customary right such as this one. In the words of Lord Diplock, the procedure makes "for speedy certainty as to whether it has the effect of a decision that is valid in public law."

[7] It cannot be denied that the sub-stratum of the plaintiffs' claim lies with the decisions of the Superintendent of Lands & Surveys in issuing the leases and licence to the 1st - 3rd defendants, respectively. It also cannot be denied that native customary right (which they alleged they have) is a right which is recognized (and therefore protected) under the Land Code. The complaint of the plaintiffs here therefore is an infringement of their right, recognized and protected by statute, by a public authority's decision, - plainly a matter which falls squarely within the purview of judicial review. Support for this view and the application of the *O'Reilly*'s principle can be found in the Court of Appeal's case of *Yahya Kassim v. Kerajaan Malaysia & Anor* [1998] 1 CLJ 43 and our very own case of *Shaharuddin Ali & Anor v. Superintendent of Lands & Surveys Kuching Division & Anor* [2004] 4 CLJ 775 in which YA Datuk Clement Allan Skinner had to decide on a similar

claim for a declaration that the plaintiffs in that case had acquired native customary rights over the land in dispute which was extinguished by the Minister of Planning & Resource Management.

[8] Quite recently last year the Federal Court in *YAB Dato' Dr Zambry Abd Kadir & Ors v. YB Sivakumar Varatharaju Naidu; Attorney General Malaysia (Intervener)* [2009] 4 CLJ 253 also deliberated on this principle. It acknowledges the diverging opinions on the applicability of the *O'Reilly*'s principle, cautioned the application of the rule to local cases and concluded that the remedies of declaratory relief under O. 15 r. 16 of the Rules of the High Court 1980 and *certiorari* are generally alternatives "and not mutually exclusive".

[9] Personally, I had also occasion to apply the *O'Reilly*'s principle and considered *YAB Dato' Dr Zambry*'s case in the case of *Shin Yang Quarry Sdn Bhd v. Pusaka KTS Forests Plantation Sdn Bhd* [2009] 9 CLJ 840 (Sibu Suit No. 22-16-2009) in which the defendant in the said suit rasied a defence that the permission by the Director of Forest to the plaintiff to build an access road to the plaintiffs' quarry through the defendant's forest licensed area was null and void. I had in the said case decided that the defendant could not raised the issue of the legality of that decision of the Director of Forest without taking out an action for judicial review of his decision. At the time of writing this judgment that decision is still pending appeal in the Court of Appeal. It is only right that I maintained a consistency in my approach to issues in dispute of this nature and to exercise the same deliberations with respect to the exceptions to the *O'Reilly*'s principle for indeed there are exceptions to the said rule. Lord Diplock in the *O'Reilly*'s case mentioned two ie when the claim for infringement of a right of the plaintiff arising under private law arose by way of a collateral issue or when the parties did not object to the adoption of the procedure used. The categories of exception are not closed declared Lord Diplock in his judgment and it is to the other probable exceptions to the principle that I am directing my mind to.

[10] After giving the matter much thought, I am of the view that cases involving claims of native customary rights such as this one are an exception to the *O'Reilly*'s principle. I came to this decision because the prosecution of the plaintiffs' right here is a genus in itself for by its very definition that right is largely unsupported by evidence; it is almost purely proved by oral evidence based on customs and tradition and is a peculiarity of only two states - Sabah and Sarawak. For the natives in these two states, - their rights to

the land - to forage, to hunt, to fish and to cultivate the land, for it is not just a place to build a home but their very livelihood - this right is handed down one generation to the next. To tie them down to the *O'Reilly*'s principle when more often than not they would only know about the transgressions of their right when the land had already been dealt with by the state authorities (as in this case) is an irreparable injustice which the Law Lords in *O'Reilly*, I am sure would never have intended.

[11] In holding that native customary rights cases are an exception to the *O'Reilly*'s principle I find support in the decision of the House of Lords in *Gillick v. West Norfolk & Wisbech Area Health Auth* [1986] AC 112. In the said case the plaintiff, a mother of five young daughters challenged, by way of a writ action, a decision of the Health authority in allowing doctors, in some circumstances, to give contraceptive advice and treatment to girls under 16 years of age without parental consent. Though her claim was dismissed on merits, the House of Lords agreed that the procedure she adopted was right and one of the reason given for that was in the words of Lord Scarman:

> ... the **private law content** of her claim was so great as to make her case an exception to the general rule. (emphasis added).

[12] It cannot be denied that the assertions by the plaintiff of having native customary rights over the land is embedded in private law; much more private, I would say than Mrs Gillick's concern for the morality of her young daughters who were not in any imminent danger of being prescribed contraceptive pills and being given treatment for related ailments. The plaintiffs in this case are facing the loss of their livelihood, their land and their rights to all these, obviously, are more private in nature than the motherly concerns of Mrs Gillick.

[13] The House of Lords in another later case, *Mercury Ltd v. Telecommunications Director* [1996] 1 WLR 48 has advised the importance of retaining flexibility in deciding these kind of cases for the exact limits of what is private law and public law have not been exactly worked out. Lord Slynn of Hadley in the said cases in fact said that the overriding question which the court must bear in mind is whether the proceedings constitute an abuse of the court's process. It is to be noted that both these House of Lords' decisions are mentioned in *YAB Dato' Dr Zambry*'s case and when I examined this proceedings before me I was unable to say that the court's process has been abused in any way.

Other Argument Of The Government

[14] In fairness to the 4th - 6th defendants, I would now consider their other argument to strike out the plaintiffs' case.

[15] Ms Yap Khan Kee appearing for the public authorities and the Government of Sarawak in this case has also referred me to ss. 84 and 94 of the Land Code. Section 84 gives the Director of Lands & Surveys the power to decide on, among others, acquisition of native customary rights by publication of a settlement notification and appointment of a settlement officer who under s. 94(1) "shall investigate publicly all claims to State land, whether based upon documentary evidence, native customary tenure or otherwise ...". She submitted that in view of the express procedure for determination of the plaintiffs' rights under the Land Code, resort to the court for these declaratory reliefs should not be allowed and cited the case of *Professor A Kahar Badar & Ors v. N Krishnan & Ors* [1983] 1 MLJ 412 and *Manggai v. Government of Sarawak & Anor* [1970] 1 LNS 80 in support of her submission.

[16] *Prof Dr A Kahar*'s case concerns a dissatisfaction in the management of a co-operative society and in which the plaintiffs sought to declare themselves as the elected members of the committee of management of the Society but the court refused the declaration on the ground that the disputes should have been referred to the Registrar-General of Cooperative Society and the writ of summons was set aside on that ground.

[17] In *Manggai*'s case, similarly, the Federal Court dismissed the plaintiff's action for a declaration that the Resident's Native Court was *functus officio* and had no jurisdiction to determine an appeal from the Native District Court in respect of a decision relating to a dispute over land which the plaintiff had with one Tawi ak Selaku. It held that where there was an alternative remedy available to the plaintiff, he must pursue that remedy first (ie, an appeal to the Native Court of Appeal). The Federal Court held, quoting Halsbury's Laws of England and the case of *Barrachough v. Brown* [1897] AC 615 that the court will not make a declaratory judgment where an adequate alternative remedy is available.

[18] The argument canvassed by Ms Yap Khan Kee here is, at first blush, compelling. It would appear from the quoted provisions in the Land Code there is already a mechanism available to determine the plaintiffs' claim of native customary rights over the land and it seems to me that there is force, in the wordings of the statute for the settlement officer to inquire into that claim. If he chose not to do so or if a person is aggrieved by his decision, the

proper recourse is to apply to the court to compel him to decide or to review his decision if it has been made and these could be done by way of a writ of *mandamus* or *certiorari*. However, in my opinion, this procedure is only available for land which have yet to be touched by the government and not when the government, through its agencies such as the 4th and 5th defendants have taken definitive action which have compromised the status of the land. It is impossible for the plaintiffs to ask the Director of Lands & Surveys and the Settlement Officer to decide on their claim to be so entitled to the land when the Director of Lands & Surveys himself had issued the 4th and 5th defendants with the leases (at that time). Similarly for the licence. The fact that it was issued and the leases were granted, it can be implied that the government through these agencies have decided that the plaintiffs have no native customary rights over the land in dispute. Put simply, the plaintiffs are not in any position to have their rights determined by the very agency who has denied them of it. The plaintiffs therefore have no other alternatives open to them but to go to court for the determination of their rights over the land.

[19] I will now move on to the second issue.

The Indefeasibility Of The Leases And Licence

[20] In my limited experience dealing with these type of cases, I have found that claimants of native customary rights have invariably sued the holders of forest licence or land titles together with the State Government and it's relevant agencies. It is so in this case. The argument of the holders of the leases is that the title issued to them are indefeasible, quoting s. 132 of the Land Code with provides as follows:

> 132 - (1) **Subject to this Code**, the registered proprietor of any estate or interest in land to which this section applies shall, except in the case of fraud, hold such estate or interest subject to the interests noted on the Register but free from all **other interest except**:
>
> (a) the estate or interest of a proprietor included in the Register in priority to the title under or through which the first mentioned registered proprietor claims, being an estate or interest to which this section applies;
>
> (b) as regards any portion of land included in the issue document of title by virtue of a wrong description. (emphasis added)

Mr Baru Bian, for the plaintiffs, in his written submission have painstakingly taken me through the case authorities to show that the words 'Subject to this Code' means the leases granted to the 2nd and 3rd defendants are subject to his clients native customary rights over the land. He said the document of title issued to the said defendants in this case were issued in contravention of the other provisions of the Land Code which give recognition to his clients native customary rights over the land because the Director of Lands & Surveys do not have the power to alienate native customary land. He cited ss. 13, 15 and 28 of the Land Code. I would reproduce s. 13(1), s. 15(1) and s. 28(1) below being the relevant provisions which merits consideration.

Section 13(1)

> 13 - (1) Subject to the direction of the Minister under section 3(1A), the Director may alienate State land, other than Native Customary Land:
>
> (a) in perpetuity or for such terms as may be fixed by rules made under this Code for the respective classes of land referred to in such rules;
>
> (b) in consideration of the payment of an annual rent;
>
> (c) in consideration, unless the Majlis Mesyuarat Kerajaan Negeri thinks fit to exempt therefrom in any particular case, of the payment of a premium, and where the alienation has been made in consideration of the payment of a premium, the amount of the premium shall be stated. The payment of the premium, if any, may be made either by a single payment or by instalments over a period not exceeding ten years as may be determined by the Superintendent;
>
> (d) subject, unless the Director otherwise directs, to a category of land use being endorsed on the document of title; and
>
> (e) subject to any such other conditions and restrictions as may be imposed by the Director.

Section 15(1)

> 15 - (1) Without prejudice to sections 18 and 18A, where native customary rights have been lawfully created over State land, such land shall not be alienated or be used for a public purpose until all native customary rights have been surrendered or terminated or provision for compensating the persons entitled thereto have been made.

Section 28(1)

> 28 - (1) No State land shall be alienated under this Code unless and until the survey of the land has been completed to the satisfaction of the Superintendent:
>
> > Provided that, when the immediate survey of any State land is impracticable, the Superintendent may order that a provisional lease in Form C in the First Schedule be executed in favour of the person entitled.

[21] I have no qualms in agreeing with him, that in view of the provisions he quoted, land titles should not be issued over native customary land, unless they have been extinguished first but with respect, once the titles are issued, I take the contrary stand and the defendants are right - there is indefeasibility of title. There are ample case authorities which decided that recognition under the Land Code gives an indefeasible title under the Land Code. Mr. Sim Hui Chuang has highlighted to me the relevant part of *Halsbury's Law of Malaysia* Vol. 10(1) 2008 Reissue at para. [250.153] where the cases of *Kuching Plaza Sdn Bhd v. Bank Bumiputra (M) Bhd* [1991] 3 CLJ 1702; [1991] 1 CLJ (Rep) 223 and *Chew Siang Jin v. Lau Chee Chong* [2000] MLJU 771 were cited in support of the indefeasibility proposition. In my opinion, the limitation given by the words 'Subject to this Code' cannot mean subject to native customary rights because it would be downright absurd to give indefeasible title to one when making it subject to another person's same right to do as he pleases over the same piece of land - to put it in a more graphic term it is just like a dog chasing its own tail - there would be no end in sight for either the native customary rights claimant, nor the title holder. However, Mr. Baru Bian is right in one aspect. Native customary rights land should not be alienated, period. That is clear from s. 13 and s. 15(1) of the Land Code but when it does, and I came back to what I have also said earlier, the claimant of these native customary rights land has a legitimate complaint against the issuer of the land title and should take issue with them; not the title holder unless they can prove fraud as stipulated in s. 132(1) of the Land Code.

[22] The same reasoning covers the forest licence of the 1st defendant for the right to take forest is incongruous which the right claimed by the plaintiffs to be so entitled to the land. One simply cannot be made subject to the other. Even though there is no like provision in the Forest Ordinance as the Land Code on indefeasibility of title, nevertheless, in my view unless the native

customary rights claimants can prove fraud and collusion between the Director of Forest and the licensee, the claimants right of complaint should lie with the issuing authority and not the licensee.

[23] My reasoning above is also premised upon the very principle in which a court action should be based and that is 'actionable wrong'. The plaintiffs must on the face of the pleading show that the 1st defendant here had, through their own acts and/or omission, caused the deprivation of the plaintiffs' right to the land. Simply having their name on the forest licence (or the lease for that matter) is in my view insufficient to constitute an actionable wrong.

[24] In other words, as issuer of the forest licence and the lease, only the 4th and 5th defendants, respectively, and the 6th defendant vicariously must be held accountable should the plaintiffs succeed in proving that they have native customary rights over the land held under the forest licence and leases in this case.

[25] For these collective reasons, I would allow the first three defendants' applications with costs to be taxed unless agreed but dismissed that of the 4th - 6th defendants' also with cost to be taxed unless agreed. If not agreed, getting-up is capped at RM5,000 for each application.